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OGC HAS REVIEWED.

27 September 1954

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Memorandum for: Acting Chief, Finance Division

Subject : Contract Consultant - 

1. Reference is made to your memorandum of 17 September 1954 inquiring as to whether it is legally proper for  to receive compensation under his contract with this Agency without regard to the fact that he is an annuitant under the Foreign Service Act. You state further that on 1 October he was employed by this Agency as a consultant at a fee of \$50.00 per day of service (emphasis supplied) and that no adjustment has been made in his annuity since you are uncertain regarding the possible impact of his employment and retirement compensation under the dual compensation laws. 25X1

2. This office has recently had occasion to review the time honored administrative practices surrounding the use of Personal Service Contract, Form No. 37-53. In this connection we stated that the phrase "per day of service" has been restricted to and utilized for those consultants whose compensation is based on a fee basis as distinguished from a time basis, i. e., "per diem, WAE (for actual hours worked)". There are various precedents on this general subject and for your information a few are referred to below. You may wish to pursue this matter administratively by conferring with the Fiscal Division and the Office of Personnel, both of which are familiar with this somewhat difficult area.

3. By letter dated October 29, 1951, the DCI raised certain questions concerning the proposed employment of retired foreign service officers as well as the right of such officers to retain their retirement annuities upon employment in other Government agencies. In substance, the Comp. Gen. refused to alter the position taken in 16 Comp. Gen. 121 which holds that while there is no prohibition in the Foreign Service Retirement Act against the re-employment in the executive civil service of a retired foreign service officer retired for disability, there was no authority for the payment of his retirement

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annuity concurrently for the period of such employment. In addition, the Comptroller General stated that the re-employment of foreign service officers, automatically retired for age, in other branches of the Federal service would be precluded unless specifically authorized in the manner set forth in section 204 of the Act of June 30, 1932, 47 Stat. 404 (5 USC 715A).

4. Unpublished Decision B-105707 dated October 19, 1951, to Comdr. J. B. Warner, Director of Special Payments Division, Bureau of Supplies and Accounts, referred to a prior ruling 26 Comp. Gen. 501 wherein it was held that the employment of a retired officer on a fee basis as a consultant in an advisory capacity, is not the holding of a "civilian office or position" within the meaning of the dual compensation laws.

5. This concept has been held applicable in the case of retired foreign service officers. Some of the cases which serve as precedents are [REDACTED]

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Though there is always the possibility of suspension of a retired foreign service officer's annuity by the Annuity Desk of the Foreign Service Finance Division, I do not believe the present case constitutes a problem based on the facts recited in your memorandum.

6. If this office can be of further assistance, please advise us.

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[REDACTED]  
Assistant General Counsel

OGC:JBK:cst

cc: Legal, Vital  
Subject, Signer  
Chrono

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